Nos. 388 and 389

In the Supreme Court of the United States

OCTOBER TERM, 1948

WELKER B. BROOKS, PETITIONER

v.

THE UNITED STATES OF AMERICA

JAMES M. BROOKS, ADMINISTRATOR OF THE ESTATE OF ARTHUR L. BROOKS, DECEASED, PETITIONER

v.

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the United States District Court for the Western District of North Carolina (R. 23-27) is not reported. The opinion of the United States Court of Appeals for the Fourth Circuit (R. 29-47) is reported at 169 F. 2d 840.

JURISDICTION

The judgments of the United States Court of Appeals for the Fourth Circuit were entered in both cases on August 26, 1948 (R. 47, 49-50). The petition for writs of certiorari was filed on October 30, 1948, and was granted on January 3, 1949 (R. 52). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Courts of the United States may, under the Federal Tort Claims Act,[1] enter judgments for damages resulting from injury or death of a soldier, where other statutes provide a complete and comprehensive system of pensions, death benefits, and other benefits for injury or death of members of the armed forces.

STATUTE INVOLVED

The pertinent provisions of the Federal Tort Claims Act are set out in Appendix A, pp. 53-55.

STATEMENT

On February 17, 1945, Arthur L. Brooks, accompanied by his brother, Welker B. Brooks, both enlisted men in the Army on authorized leave, was driving in his privately owned car on a public high-

[1] C. 753, 60 Stat. 842. This Act has been repealed, but its provisions have been incorporated into the revision of Title 28, United States Code, by the Act of June 25, 1948 (Public Law 773, 80th Cong., 2d sess.) at Sections 1291, 1346, 1402, 1504, 2110; 2401, 2402, 2411, 2412, and 2671-2680. This revision took effect September 1, 1948. However, the new code sections are, for convenience referred to herein as the Federal Tort Claims Act.

way near Fayetteville, North Carolina (R. 23-24). Upon entering an intersection in the highway, the car collided with an Army truck driven by a civilian employee of the War Department on official business (R. 8, 17, 24). Arthur Brooks was killed instantly and his brother, Welker Brooks, was injured (R. 9, 17).

Shortly after his discharge from the Army in December 1945, Welker B. Brooks applied to the Veterans' Administration for disability compensation and has been receiving, since April, 1946, monthly disability payments for the injuries he sustained in the accident involved in this case. The current rate of these monthly payments is $27.60, which he has been receiving since May 1, 1946 (R. 21-22). Welker B. Brooks also received his full army pay and allowances during the period of his incapacity. In addition, the United States furnished, without cost to him, all necessary medical, surgical, and hospital services (R. 22).

The mother of the deceased soldier, Arthur L. Brooks, has received from the United States a six-months' death gratuity payment (R. 16, 22). The record now before this Court does not specifically indicate that other benefits were paid by the Government by reason of Arthur's death. However, a letter from the Veterans' Administration dated August 12, 1947, addressed to the Attorney General, states that payments of $5,000 in National

Service Life Insurance proceeds were approved by the Veterans' Administration, and are presently being made by the Government to the deceased soldier's parents. That letter also states that a claim filed by his parents for pension benefits as a result of his death was not allowed because dependency had not been shown at the time of filing of that claim.[2]

On December 24, 1946, James M. Brooks, as administrator of the estate of his son, Arthur, brought suit against the United States in the United States District Court for the Western District of North Carolina under the Federal Tort Claims Act (R. 11-13). Welker B. Brooks filed a similar suit in that court at the same time for damages for his personal injuries (R. 2-5). The United States filed answers to both complaints, denying negligence on the part of the civilian employee of the War Department and alleging contributory negligence. After the cases were consolidated and tried together, the District Court, on conflicting evidence, found that the Army truck had been operated negligently, and that the injuries sustained by Welker B. Brooks, as well as his brother's death, were proximately caused by such negligence (R. 8-9, 16-17). The court, on November 8, 1947, entered judgment for $4,000 for Welker's personal injuries and for

[2] A copy of this letter is set forth in Appendix B, pp. 50-58.

$25,000 for the death of Arthur (R. 9-10, 18).[3] In its opinion, the District Court held that the fact that Welker B. Brooks "is and has been receiving monthly compensation from the Veterans' Administration since the accident" does not bar his action against the United States under the Federal Tort Claims Act (R. 25). On January 7, 1948, that court also denied motions by the United States to dismiss the suits on the ground of lack of jurisdiction of the District Courts to entertain suits under the Federal Tort Claims Act for damages for injuries to, or death of, a serviceman (R. 10, 19).

On appeal, the court below, rejecting each of the contentions here re-asserted by petitioners, held that "the Federal Tort Claims Act does not apply to claims by soldiers in the United States Army, even when those claims arise out of injuries or death which, as here, are not service-caused" (R. 38). It accordingly reversed both judgments of the District Court (R. 47, 49). Chief Judge Parker dissented (R. 38-47).

SUMMARY OF ARGUMENT

1. While a literal reading of the language of the Federal Tort Claims Act would, as petitioners contend, extend the coverage of that Act to claims against the United States arising out of the death

[3] In addition, the District Court entered judgment for the administrator in the sum of $425 for damages to Arthur Brooks' automobile which was almost demolished by the collision (R. 18). The United States does not question the propriety of that part of the judgment.

or injury of members of the armed forces, several important considerations require the rejection of such a literal reading. It is a well-settled rule that where Congress has developed a comprehensive system of special legislation dealing with a particular subject matter, statutes of a general nature will be held to be inapplicable to the special subject matter. That rule has been regularly applied by the courts in interpreting various other statutes in which the legislature has made the Government amenable to suit for its torts. Numerous decisions under such general tort liability laws as the Public Vessels Act and the Railroad Control Act of 1918, and under comparable state legislation, hold that where the Government has already provided an adequate and comprehensive statutory system of pension, disability and other benefits for servicemen injured or killed during their period of service, that system constitutes the exclusive remedy.

Congressional awareness, at the time of passage of the Federal Tort Claims Act, of this long-established rule and its consistent application under the related tort claims legislation, makes it obvious that Congress did not intend the Federal Tort Claims Act to apply to the specialized and comprehensively-covered field of military injury or death claims.

II. The long-settled federal policy of providing an adequate and comprehensive statutory system

for handling death or injury claims of members of the armed forces dates back to the pre-Revolutionary War period. Special payments to injured soldiers was an established colonial practice. Congressional concern for such soldiers, and, in the event of their death, for their dependents, has been consistently manifested throughout each of the wars in which the United States has been engaged. The current extent of this special concern for a serviceman or his dependents can be gauged from the vast number of statutes under which benefits are now paid.

The more important of these statutes are those authorizing monthly payments for a serviceman's partial or total disability caused by injuries during his period of military service, granting monthly payments and other benefits to the widow, children and dependent parents of a deceased serviceman, authorizing him to draw full service pay during his period of incapacity, entitling him to free and complete hospitalization and medical care during and after his military service, and making available to him National Service Life Insurance.

These various statutes reveal that Congress, at the time of its passage of the Federal Tort Claims Act, had already established an elaborate and carefully worked out statutory system for dealing with injuries or death of servicemen. This statutory system is analogous to the Workmen's Compensation Laws. Under both, compensation is made promptly, without litigation, expense or

regard to fault for personal injury or death. While private industry makes payments only where the injury or death occurred in the course of actual employment, Congress has extended the compensation benefits to servicemen for disability or death suffered at any time while in military service, whether in active military duty or on leave. Limiting the private employee to the workmen's compensation benefits cannot be viewed as discriminatory. Nor should requiring a serviceman similarly to vindicate his claims against the Government through the comprehensive statutory scheme specially designed for that purpose, be so viewed.

III. That Congress did not intend the Federal Tort Claims Act to apply to claims for a serviceman's injury or death is evidenced by the purpose of the Act, several specific provisions it contains, and a general Congressional policy prohibiting duplicate compensation benefits. The immediate purpose of the Act was to shift from the Congress to the courts the time-consuming and burdensome task of considering, each year, thousands of tort claims asserted against the Government. For each claim that was favorably acted upon, a special Private Law had to be enacted. The enactment of thousands of these private laws showed a full assumption by the Congress of public liability for negligent governmental torts. The Tort Claims Act merely transferred the adjudication of such tort claims to the courts. It is significant that very few, if any, of the private laws so intended to be

eliminated by the Act, were ever passed to authorize compensation for a serviceman's injury or death claim. Reading the Act, then, in light of its purpose and the evil it sought to remedy, it is obvious that an expansion of the Act to cover such claims is unwarranted. Several specific sections of the Act show that a different view produces undesirable or absurd results which can be avoided only by holding the Act inapplicable to such claims.

Moreover, allowing claims for a serviceman's death or injury to be compensated under the Act would repudiate a firmly established Congressional policy, adhered to since 1818, which prohibits the United States from conferring duplicate compensation benefits on a serviceman for personal injuries sustained during the period of service.

Petitioners, in apparent recognition of the disruption of military discipline and morale which would otherwise ensue, do not argue that the Act should apply to injury or death caused as a result of military duty. It is their contention, however, that the Act should be viewed as applicable to injury or death which, as in the instant case, occurred during the period of military service but not as a result thereof. The lack of merit in this attempted distinction is evidenced by the fact that the statutory benefits under the comprehensive system are available in both situations.

These considerations point with sureness to the conclusion that Congress did not intend the Act to apply to such claims. They rebut completely any

inference which might otherwise arise from the failure of Congress to include in the Act an express exception of claims by persons in the armed forces.

IV. The availability of the various statutory benefits in the instant case and their acceptance by the petitioners bars the instant suits under the Federal Tort Claims Act. It is well-established under similar legislation, that the acceptance of statutory benefits by servicemen or their dependents bars a subsequent action for damages under general related legislation. It has also been recently so held with respect to a civilian employee of the Government seeking additional damages under the Federal Tort Claims Act. No different conclusion is justified merely because the Federal Tort Claims Act suit is instituted by a military employee.

ARGUMENT

I

In the Absence of a Contrary Legislative Intent, Statutes of General Application Do Not Apply to Special Fields in Respect of Which Congress Has Already Enacted Complete and Comprehensive Legislation; This Rule Is Peculiarly Applicable to Claims for Injury or Death of Members of the Armed Forces

While the Federal Tort Claims Act does not, in terms, either include or exclude claims arising out of the injury or death of members of the armed forces, it may be conceded that its language is sufficiently broad to cover such claims, and would doubtless do so in the absence of countervailing considerations. But such considerations exist. It is settled law that where Congress, over a long

period of time and through many enactments has dealt with a particular subject matter in such a manner as to create a complete and comprehensive system of law for dealing therewith, subsequent or even prior statutes of general application, which would otherwise apply, are held to be inapplicable to the special subject matter. *United States* v. *Barnes*, 222 U. S. 513, 520; *United States* v. *Sweet*, 245 U. S. 563; *Ozawa* v. *United States*, 260 U. S. 178, 193, 194; *United States* v. *Jefferson Electric Mfg. Company*, 291 U. S. 386, 396; *Missouri* v. *Ross*, 299 U. S. 72, 76; *United States et al.* v. *American Trucking Associations*, 310 U. S. 534, 544; *Townsend* v. *Little*, 109 U. S. 504, 512; *United States* v. *Fixico*, 115 F. 2d 389, 393 (C. A. 10); *Iriarte et al.* v. *United States*, 157 F. 2d 105, 108 (C. A. 1); *Cook County Nat. Bank* v. *United States*, 107 U. S. 445, 450-451. As the Court in the *Cook County Bank* case stated (p. 451), "The question is one respecting the intention of the legislature." Cf. *Dobson* v. *United States*, 27 F. 2d 807, 808-809 (C. A. 2), certiorari denied, 278 U. S. 653. The foregoing rule consistently has been applied in the interpretation of cognate acts wherein the Government has consented to suit for personal injury or death.

A. *Public Vessels Act of 1925.* The Public Vessels Act (43 Stat. 1112, 46 U. S. C. 781 *et seq.*), authorizes the institution of *in personam* suits in admiralty against the United States for damages

caused by its public vessels. Two decisions under that Act both of which were denied review by this Court, involved the identical issue raised on this appeal. In *Dobson v. United States*, 27 F. 2d 807 (C. A. 2), certiorari denied, 278 U. S. 653, and in *Bradley v. United States*, 151 F. 2d 742 (C. A. 2), certiorari denied, 326 U. S. 795, rehearing denied, 328 U. S. 880, it was held that, despite the absence of any express exclusionary provision in the Public Vessels Act, members of the naval forces could not sue the United States under that Act, inasmuch as an elaborate pension system for personal injury and death of naval personnel had already been provided by statute.

In the *Dobson* case, Judge Swan, speaking for a unanimous court, stated (27 F. 2d at 808):

> Verbally, there is nothing which excludes liability for damage to property or person of officers or crew. * * *
>
> Nevertheless the construction contended for by appellants involves so radical a departure from the government's long-standing policy with respect to the personnel of its naval forces that we cannot believe the act should be given such a meaning. The statute itself does not specify who may maintain suits under it. To allow suit by the officers and crew of the public vessel for damage caused by it to them would be too great a reversal of policy to be enacted by such general terms. The Act of October 6, 1917 (40 Stat. 389 [34 U.S.C.A. Sections 981, 982]) directs the Paymaster General of the Navy to

reimburse officers, enlisted men, and others in the naval service * * *.

Chapter 3, title 38 of the United States Code (38 U.S.C.A. Sections 151-206), provides an elaborate pension system for personal injury and loss of life incurred by officers and enlisted men in the navy. These pensions may be thought an inadequate substitute for the recovery of full damages under the Public Vessels Act of March 3, 1925, but they were well known to all who entered the naval service. The policy evidenced by these statutes has existed for a great many years. If it had been the purpose to change that policy as respects officers and seamen of the navy injured by the unseaworthiness of a public vessel, or by the fault of one another, because that is what in the end it comes to, we cannot think it would have been left to such general language as is to be found in the above-quoted section 1. * * *

We believe that Congress meant to leave upon the members of the naval forces the same risks of injuries suffered in the service of the United States as they had before.

Similarly, in the *Bradey* case, Judge Learned Hand, after pointing to the fact that "the only question before us is whether in these circumstances the United States has submitted to the jurisdiction of the court" (151 F. 2d 742), stated:

> it is quite true that nothing in the text of the Public Vessels Act bars suit by a member of the armed forces, but in *Dobson* v. *United States*, 2 Cir., 27 F. 2d 807, cert. den. 278 U. S. 653, 49 S. Ct. 179, 73 L. Ed. 563, we held

that, because of the compensation elsewhere provided for such persons, they must be deemed excluded from its protection. That case directly rules here; and, to succeed, the libellant must prevail upon us to overrule it. This she attempts to do on the ground that the course of judicial decision since then discloses a change of attitude towards such sufferers.

We can find no evidence of such a change, nor do we see any antecedent reason to think that we were wrong before.[4]

B. *Railroad Control Act of 1918.* In the period of federal control of the railroads during World War I, the Director General of the Railroads was made liable for personal injury and death to the same extent as railroads. Act of March 21, 1918 (40 Stat. 451, 456). These suits were suits against the United States (*Missouri Pacific Railroad Co.* v. *Ault*, 256 U. S. 554, 561; *Dahn* v. *Davis*, 258 U. S. 421, 428; 32 Opinions Attorney General 531, 535 (1921) and servicemen attempting to institute such suits were uniformly relegated to the benefits provided by the military and veterans' laws.

Thus, in *Seidel* v. *Director General of Railroads*, 149 La. 414, the court held that the remedies pro-

[4] In *The West Point*, 71 F. Supp. 206, 212 (E.D. Va.), Navy Officers who were passengers on a United States-owned motor boat which collided with a vessel owned by the City of Portsmouth were held, on the basis of the stated rule, not to be entitled to sue the United States under the Public Vessels Act, but were relegated to redress against the City of Portsmouth for damages and personal injuries incurred in the accident. Similarly, Coast Guard seamen have been held not entitled to sue the United States under that Act. *O'Neal* v. *United States*, 11 F. 2d 869 (E.D.N.Y.), affirmed, 11 F. 2d 871 (C.A. 2).

vided under the federal statute allowing war risk insurance benefits for injuries to servicemen in line of duty are "exclusive" and pointed out that a contrary conclusion would subject the Government to a double liability.

Again in *Nixon v. Hines, Director General of Railroads*, 205 Ala. 355, 87 So. 603, the court sustained a judgment for defendant in a suit by a soldier for personal injuries sustained while traveling on a railroad under federal control. The court ruled that (87 So. at 607-608):

> *The amount of compensation and the remedy * * * prescribed [by War Risk Insurance Act] is exclusive of other measures of and for liability and remedies provided for the protection of the civilian population of the general public.* * * * A slight analogy is also found in the denial of double recovery under the Employees Compensation Act. * * * on account of his status as a soldier when sustaining his injury and his relationship to the government inflicting that injury, a suit by him for said injury sustained in his transportation by the government as a soldier would be against the government, not permitted by an act of Congress, and is denied by public policy. *In re Grimley*, 137 U. S. 147 * * * The reason for this rule is that plaintiff's enlistment as a soldier * * * was a contract with the government which changed his status as an individual and his relation to the state and public * * * creating a new status with correlative rights and duties. [Italics supplied.]

See, to the same effect, *Bryson* v. *Hines*, 268 Fed. 290 (C. A. 4), and cf. *Posey* v. *T. V. A.*, 93 F. 2d 726 (C. A. 5).

C. *New York Tort Claims Act.* *Goldstein* v. *New York*, 281 N. Y. 396, involved a suit under the New York Tort Claims Act (Laws of New York, 1920, c. 922, sec. 12; Laws of New York, 1939, c. 860, sec. 8) against the State for the wrongful death of a state militiaman caused by the negligence of another militiaman. The action was dismissed by the New York Court of Appeals because the State had already, by separate statute, provided pensions for injuries suffered by soldiers and thus set up a "complete system * * * for handling such claims." That court further ruled (281 N. Y. 403):

> The statement that the State may be made liable in damages to a soldier or his dependents, because of injuries inflicted upon him through negligence of a brother soldier or officer, except as provided in Military Law, is rather startling * * *. To justify a decision that another concurrent remedy has been created whereby the State may be made liable in unlimited amounts requires a statute to that effect, the meaning and intent of which is unmistakable.

Similar holdings appear in *Kennedy* v. *New York*, 16 N. Y. Supp. 2d 288; *McAuliffe* v. *New York*, 107 Misc. 553, 176 N. Y. Supp. 679. See *Hambrook* v. *New York*, 185 Misc. 1061, 58 N. Y. Supp. 2d 490.

The uniform holdings of the cited cases are that where the Government has already provided an adequate remedy under legislation setting up pension, disability and other benefits for servicemen injured or killed during their period of service, that remedy ordinarily is exclusive. They further point out that the courts may not, under subsequent legislation, entertain suits for additional damages on account of such injury or death, even though the later statute conferring the right to suit does not expressly except such claims. Congress obviously must have enacted the Federal Tort Claims Act with an awareness of this long established rule. *The "Abbotsford,"* 98 U. S. 440; *United States Navigation Co., Inc. v. Cunard S. S. Co., Ltd.*, 284 U. S. 474, 481; *Overstreet, et al. v. North Shore Corp.*, 318 U. S. 125, 131, 132; *Chicago & Alton Railroad Co. v. United States*, 49 C. Cls. 463, affirmed, 242 U. S. 621; *Plunkett v. United States*, 58 C. Cls. 359; *United States v. Security-First National Bank of Los Angeles, et al.*, 30 F. Supp. 113 (S. D. Cal.), appeal dismissed, 113 F. 2d 491 (C. A. 9); *Progressive Miners of America, et al. v. Peabody Coal Co., et al.*, 7 F. Supp. 340, 346 (E. D. Ill.), affirmed, 75 F. 2d 460 (C. A. 7); *United States v. Albright, et al.*, 234 Fed. 202 (D. Mont.). Accordingly, if the existence of a complete and comprehensive statutory scheme of dealing with a particular subject matter be disclosed, and no contrary

legislative intent be discovered, it must be assumed that in enacting the statute of general application, Congress did not intend it to apply nor consider it as applying to the particular subject matter. This is not the writing of an exception into the general act but rather a judicial recognition that the general act does not apply in the particular field at all.

II

Congress Has Provided, Through a Series of Enactments, a Comprehensive System for Compensating Members of the Armed Forces of the United States and Their Dependents for the Injury or Death of Such Members

As the court below observed (R. 31-32), "The soldier, upon enlistment, acquires a special and unique military status, quite different from any relation between the Federal Government and civilians. *United States* v. *Standard Oil Co. of California*, 332 U. S. 301, 305; *In re Morrissey*, 137 U. S. 157, 159; *In re Grimley*, 137 U. S. 147. The soldier is subject to military discipline even while at play, and his desertion is a serious crime, punishable at times by death." The development of the statutory system for caring for injured and disabled members of the armed forces and their dependents and the nature of the compensatory benefits available under current legislation underscores the full extent to which the Government, at the time of passage of the Federal Tort Claims Act, recognized a public obligation to provide for soldier injury or death claims. It constituted, we submit, a complete and comprehensive system.

A. Development of the Statutory System for Compensating Soldiers' Injury and Death Claims. The most recent compilation of "Laws Relating to Veterans,"[5] sets forth the text of over 230 federal statutes enacted during 1914 to 1948. Current congressional concern for providing an adequate and specialized system of compensation for a serviceman's injury or death is also evidenced by the introduction during the fiscal year 1947, of approximately 2300 bills pertaining to veterans' benefits,[6] and by the introduction of almost 100 such bills during the first 10 days of the first session of the 81st Congress.[7] This special interest of Congress in military and veterans' affairs is not, however, a phenomenon of World War I or II, but began in the earliest days of our Government.

The need and desirability of providing specially for disabled Revolutionary Army soldiers was stressed early in 1776.[8] Shortly thereafter, the

[5] Compiled by Superintendent, Document Room, House of Representatives, 1948.

[6] Annual Report of the Administrator of Veterans' Affairs, 1947, p. 64.

[7] 95 Congressional Record Index 54-55.

[8] Even before the Revolutionary War, the payment of pensions to injured soldiers was a well-established colonial practice. As early as 1624, the Virginia General Assembly passed laws making special provision for "those that shall be hurt upon service." 1 Hening, Stat. at Large for Virginia, 128. Other examples of pension legislation under the Colonial Laws of Massachusetts, Maryland, New York and Rhode Island are collected in Glasson, *Federal Military Pensions in the United States*, pp. 14-17.

Continental Congress adopted the first national pension law in the United States.[9] This was followed by a long series of other enactments for Revolutionary War Soldiers and their dependents.[10] The expansion of the military forces as a result of the War of 1812 and the Mexican War was accompanied, as was the Revolutionary War, by the passage of numerous other statutes for compensating injured soldiers of those wars.[11] Still additional statutes were passed to compensate soldiers

[9] Ford, *Journals of the Continental Congress*, vol. 5, pp. 469, 702-705. This Act (Act of August 26, 1776), which was to be administered through the various states, authorized half pay to servicemen suffering total disability while in the service of the United States. Proportional relief was authorized for the partially disabled.

[10] Act of September 25, 1778 (*id.*, vol. 12, p. 953); Act of April 23, 1782 (*id.*, vol. 22, p. 210); Act of September 29, 1789, 1st Cong., 1st sess., 1 Stat. 95; Act of March 23, 1792, 1 Stat. 243; Act of February 28, 1793, 1 Stat. 324; Act of April 25, 1808, 2 Stat. 191. In 1816, an increase in pension rates was suggested, in order to reflect the increased cost of living and to allow veterans to support themselves "plentifully and comfortably." House Report, Committee on Pensions and Revolutionary Claims, American State Papers, Claims, 473-474. The Act of April 24, 1816, 3 Stat. 296, was passed to meet this need. Still additional provisions for veterans were sought in President Monroe's message to Congress in December, 1817. 31 Annals of Congress, 15th Cong., 1st sess., 1817-1818, vol. 1, p. 19., See; also, Act of June 7, 1832, 4 Stat. 529; Act of July 4, 1836, 5 Stat. 127; Act of March 9, 1878, 20 Stat. 27.

[11] Act of April 24, 1816, 3 Stat. 296-297; Act of February 14, 1871, 16 Stat. 411; Act of March 9, 1878, 20 Stat. 27; Act of March 19, 1886, 24 Stat. 5; Act of September 8, 1916, 39 Stat. 844; Act of May 13, 1846, 9 Stat. 9; Act of June 3, 1858, 11 Stat. 309; Sec. 3, Act of July 25, 1886, 14 Stat. 230; Sec. 13, Act of July 27, 1868, 15 Stat. 237; Sec. 18, Act of March 3, 1873, 17 Stat. 572; Act of January 29, 1887, 24 Stat. 371; Act of February 6, 1907, 34 Stat. 879; Act of May 11, 1912, 37 Stat. 112.

of the Civil war and their dependents.[12] And, within six months after the United States entered World War I, the President approved a law establishing a detailed and complete compensation system for those who served in that war as well as for their dependents.[13] The World War Veterans' Act of June 7, 1924 (43 Stat. 607, 38 U. S. C. 421) later consolidated and revised the laws affecting the various benefits available to servicemen of World War I and their dependents.[14]

On March 20, 1933, Congress repealed all prior laws granting compensation and other allowances to World War I veterans and their dependents, laid down broad principles for the granting of pensions

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[12] Act of July 22, 1861, 12 Stat. 268, 270; Act of July 4, 1864, 13 Stat. 387; Act of June 8, 1872, 17 Stat. 335; Act of March 3, 1865, 13 Stat. 499; Act of June 6, 1866, 14 Stat. 56, 58; Act of March 19, 1886, 24 Stat. 5; Act of April 19, 1908, 35 Stat. 64; Act of June 27, 1890, 26 Stat. 182; Act of April 24, 1906, 34 Stat. 133; Act of March 4, 1907, 34 Stat. 1406; Act of May 11, 1912, 37 Stat. 112.

[13] Act of October 6, 1917, 40 Stat. 398; Act of June 27, 1918, 40 Stat. 617; Act of July 11, 1919, 41 Stat. 158; Act of March 3, 1919, 40 Stat. 1302; Act of August 9, 1921, 42 Stat. 147, 150; Act of April 20, 1922, 42 Stat. 496; Act of May 11, 1922, 42 Stat. 507; Act of July 1, 1922, 42 Stat. 818; Act of June 5, 1924, 43 Stat. 389; Act of December 18, 1922, 42 Stat. 1064; Act of March 4, 1923, 42 Stat. 1521.

[14] It provided for compensation for service-incurred death and disability, (43 Stat. 615, 38 U. S. C. 471); for burial allowances (43 Stat. 616, 38 U. S. C. 472), for medical, surgical, and dental treatment in addition to compensation (43 Stat. 618, 38 U. S. C. 479), generous life insurance protection (43 Stat. 624, 38 U. S. C. 511); and a complete program for vocational rehabilitation of the disabled serviceman (43 Stat. 627, 38 U. S. C. 531). Compensation rates for specific disabilities were again increased by the Act of May 5, 1926 (44 Stat. 396) and the Act of February 11, 1927 (44 Stat. 1085).

and other benefits and gave the President the authority to prescribe by regulation the administrative details (48 Stat. 8, 38 U. S. C. 701). This is the basic law under which payments are now made for disability or death of servicemen during World War I and II. The Presidential regulations cover pension payments for death or disability during wartime and peacetime service, as well as for death or disability incurred subsequent to service.[15]

B. *Payments and Other Benefits Currently Available under This Comprehensive Statutory Scheme.* The principal benefits available under the 1933 legislation for compensating soldiers and their dependents for disability and death incurred while in service are, together with a vast number of other statutes conferring additional benefits on veterans, codified in Title 38, U.S.C. In addition, Title 10 (Army), Title 34 (Navy) and Title 37 (Pay and allowances of Army, Navy, Marine Corps, Coast Guard) contain many other statutes on military benefits and perquisites. The adequacy and comprehensiveness of this statutory scheme is shown by reference to a few of the more important enactments:

1. Monthly pension payments are provided by law in respect of those servicemen who have incurred partial or total disabling injuries or death

[15] The detailed regulations promulgated by the President under the Act of March 20, 1933, are reprinted at the end of Chapter 12 of 38 U. S. C.

during their period of military service (Act of March 20, 1933, Sec. 1(a), 48 Stat. 8, 38 U.S.C. 701(a); Act of July 13, 1943, 57 Stat. 554). The amount of the disability pension depends, of course, on the degree of disability and may be as high as $300 per month (Act of September 20, 1945, 59 Stat. 533, 534, amending Vet. Reg. No. 1(a), part I, part II (o); see 38 C.F.R. 1946 Supp. 35.06, p. 5913). A disability pension continues to be paid until the serviceman's death or until the disability has ceased. Where, after a pension award has been made, the disability is shown to have increased, commensurate increases in the pension will be made (Act of June 21, 1879, 21 Stat. 23, 30, as amended, 38 U.S.C. 57; 38 C.F.R. Cum. Supp. 3.1216, 4.2117).[16] Moreover, under the Act of July 2, 1948, veterans with a disability of 60 percent or over are entitled to additional payments ranging from $14 to $81 every month, based on their degree of disability and the number of their dependents. (Public Law 877, 80th Cong., 2d sess.)

2. Existing federal laws also provide for the payment of pensions to the widow, children, and

[16] Thus, Welker B. Brooks' disability pension of $27.60 per month, which is now being paid to him as a result of the accident on which his claim against the United States under the Federal Tort Claims Act is based, will be paid to him for his lifetime or so long as the disability resulting from that accident continues. The $27.60 monthly payment, considering Welker's life expectancy will amount to almost $13,000. If at any future date medical examination should reveal that the disability due to that particular accident has increased, his pension will of course be proportionately raised.

dependent mother and father of any soldier who dies as a result of injuries incurred in military service (Act of March 20, 1933, sec. 1(c), 48 Stat. 8, 38 U.S.C. 701(c); 38 C.F.R. 1946 Supp. 35.06, p. 5913). A wife, with one child, is entitled to $78 per month in the event of the death of a soldier in service. For each additional child, the widow is entitled to $15 per month (38 C.F.R. 1946 Supp. 35.06, p. 5913). In cases involving death in service in line of aeroplane or submarine duty, the law authorizes payment to certain widows or surviving parents of a monthly sum equal to twice the amount of the pension normally payable (Act of March 3, 1915, 38 Stat. 940, as amended, 38 U.S.C. 179; Act of April 27, 1928, 45 Stat. 466, 38 U.S.C. 232).[17]

3. A soldier who sustains injuries and is thereby incapacitated from rendering further military service continues to draw his full Army pay for the entire period of his incapacitation. (See Act of May 17, 1926, 44 Stat. 557, 10 U.S.C. 847a; Act of June 16, 1942, 56 Stat. 363, as amended, 37 U.S.C 109,

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[17] In the instant case, the deceased soldier, Arthur L. Brooks, left no wife or children surviving him. An application for a dependency pension filed by his parents, as a result of his death, has been disapproved for lack of a showing that they were dependent upon him. See Appendix B, *infra*, p. 57. However, the statutory pension payments will, of course, be made to the parents upon their furnishing proper proof of dependency. These payments will, upon authorization, continue in accordance with the conditions of the applicable statute (Act of July 30, 1941, 55 Stat. 608, 38 U.S.C. 725) for so long as the parents live.

110; cf. Article of War 107, 41 Stat. 809, 10 U.S.C. 1579; *United States* v. *Standard Oil Co. of California*, 332 U.S. 301, 302). There is consequently no loss of his military earnings due to the injuries he received in the course of his service, even though the injuries were sustained while he was on leave and not engaged in any military duties. When such a soldier is discharged, if the disability which began during his military service should continue, he will, of course, be eligible, as was Welker B. Brooks in the instant case, to receive the applicable monthly pension payments.

4. Soldiers injured during the period of their military service receive free and complete hospitalization and medical care while in service as did Welker B. Brooks in this case (R. 22). Subsequent to their discharge, soldiers are also entitled to receive additional hospitalization and medical care[18] from the Veterans Administration (Act of June 7, 1924, sec. 10, 43 Stat. 610, as amended, 38 U. S. C. 434; Act of March 30, 1933, sec. 6, 48 Stat. 9, 38

[18] This medical care includes the furnishing, by the Veterans Administration, of seeing-eye or guide dogs for blind veterans (Act of May 24, 1944, 58 Stat. 226, 38 U.S.C. 251), and the furnishing of artificial limbs or appliances which are reasonably necessary for any injury sustained by the serviceman (Act of May 23, 1944, 58 Stat. 225, 38 U.S.C. 706b). The Act of August 8, 1946 (60 Stat. 915, 38 U.S.C. 252), moreover, enables the Veterans Administration to provide certain disabled veterans with automobiles by appropriating $30,000,000 to pay the total purchase price, not in excess of $1,600 apiece, to the dealer from whom the veteran is purchasing the automobile. The Act of July 30, 1947 (Public Law 271, 80th Cong., 1st sess.), appropriates an additional $5,000,000 for payment for such automobiles.

U. S. C. 706; 10 C. F. R. Cum. Supp. 77.2(b) and 77.15(b)).

5. Upon the death in the service of a soldier, an amount equal to six months' pay at the rate received by the soldier at the time of his death is paid to his beneficiary (Act of June 3, 1916, as amended, 41 Stat. 367, 57 Stat. 599, 10 U. S. C. 903). Where the deceased person leaves no widow or child the payment of the six-month death gratuity is made to any other relative previously designated by him for that purpose.[19]

6. Soldiers are also granted, upon application, insurance up to $10,000 under the National Service Life Insurance Act (Act of October 8, 1940, sec. 602, 54 Stat. 1009, as amended, 38 U. S. C. 802). Such insurance is available not to the public generally but only to servicemen. The insurance rates are very low in comparison with commercial life insurance rates, since the Government defrays administrative costs and the premiums reflect neither such costs nor that of the cost of waiver of premiums on account of total disability. Sections 606 and 607 of the National Service Life Insurance Act, 54 Stat. 1012, as amended, 38 U. S. C. 806, 807.

So modest are the premium requirements that disbursements of proceeds of this insurance at times have exceeded premium receipts. Annual Report of the Administrator of Veterans Affairs

[19] The six-month death gratuity payable on behalf of the death of Arthur L. Brooks has already been paid to his mother.

for 1933, p. 28; *Lynch* v. *United States*, 292 U. S. 571, 576, note 2. This Court has held the payment of such proceeds to "include both insurance and pension" (*United States* v. *Worley*, 281 U. S. 339, 343; *White* v. *United States*, 270 U. S. 175, 180) and has viewed this insurance as having been "devised in the hope that it would, in large measure, avoid the necessity of granting pensions." *Lynch* v. *United States*, 292 U. S. 571, 576, n. 2.[20]

7. Typical of other federal statutes conferring express benefits are the Act of June 27, 1944 (58 Stat. 388, 5 U. S. C. 852), giving employment preference to veterans who were injured in the course of their military service and who are seeking federal civil service employment, and the statute conferring special farm loan and mortgage insurance privileges on veterans with pensionable disabilities so as to afford such veterans sufficient income which, together with their pensions, will enable them to meet living and operating expenses and the amounts due on their loans (Act of August 14, 1946, 60 Stat. 1073, 7 U. S. C. 1001 (e)).[21]

[20] The deceased soldier in the instant case availed himself of this type of insurance, and his parents are receiving the "insurance and pension" proceeds of a $5,000 government policy.

[21] For a collection of other federal statutes conferring special rights and benefits on veterans, and their dependents, see "Laws Relating to Veterans," 1948 (Superintendent, Document Room, House of Representatives), and Kimbrough and Glen, *American Law of Veterans*. For a complete index and digest of benefits conferred by various state statutes, see State Veterans Laws (79th Cong., 1st sess., House Committee Print No. 8).

In view of these various statutes, it is clear that Congress, at the time of the passage of the Federal Tort Claims Act, had already given ample consideration to the contingencies arising from injuries or death sustained by soldiers and had developed an adequate [22] and comprehensive administrative system to deal with those contingencies.

C. *Similarity of Military Disability Benefits to Workmen's Compensation Systems.* The statutory system developed for the care of servicemen and their dependents has many of the essential features of Workmen's Compensation Laws, providing for persons disabled or killed in industry. Both pro-

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[22] The adequacy of this system is shown by the following information from the Annual Report of the Administrator of Veterans' Affairs for 1947 (pp. 19-28):

As of June 30, 1947, over 1,700,000 World War II veterans were receiving service-connected disability benefits amounting to over 877 million dollars; and over 3,500 World War II veterans were receiving non-service connected disability benefits amounting to an additional two million dollars for the 1947 fiscal year. On the same date, death compensation, at a cost of over 169 million dollars for the 1947 fiscal year, was being paid to dependents of 223,500 World War II veterans for service-connected deaths, and such compensation at an additional cost of over one million dollars for that year was being paid to over 2,000 World War II veterans for non-service connected deaths.

In addition, as of June 30, 1947, over 320,000 World War I veterans were receiving service-connected disability benefits amounting to over 206 million dollars and over 114,000 World War I veterans were receiving non-service connected disability benefits at a cost of an additional 57 million dollars, for the 1947 fiscal year. On the same date, service-connected death compensation was being paid to dependents of 76,760 World War I veterans, at a cost of over 52 million dollars, and at a cost of over 89 million dollars for non-service connected deaths to dependents of 154,000 World War I veterans, for the 1947 fiscal year.

vide for disability compensation without fault. The position of the servicemen may be likened to that of an employee in an extra-hazardous occupation; the United States to that of the employer; and the cost of military deaths or injuries is borne by the national government (the industry). The disability itself, coupled with the existing military relationship, supports the award. While these payments, in private industry, are made only where the injuries occurred in the course of actual employment, Congress has extended the benefits to a serviceman for disability during the entire period of his service, whether he was on active military duty or on furlough or leave at the time he received his injuries. Act of September 27, 1944, 58 Stat. 752, amending Vet. Reg. No. 10, par. VIII. Even in the absence of such statutory extension, it has been recognized that a serviceman is entitled to compensation benefits for injuries sustained while he was away from duty and on leave, inasmuch as the military relationships is continuous and is not broken because of a pass. "A pass granting temporary leave for recreational purposes cannot change this status any more than a leopard can change its spots. It would be *dehors* the principles of military science if it were otherwise." *Globe Indemnity Co. v. Forfeit*, 165 Va. 267, 272. Just as the provisions for the workmen's compensation benefits relieve the private employer from any further liability for the death or injury to his employees

even though the injured employee would obtain a far greater recovery by suit if he could establish the employer's negligence, the analogous and more generous benefits available to servicemen and their dependents should, we submit, relieve the United States of any additional liability. Limiting the private employee to workmen's compensation benefits can not be viewed as discriminating against him even though a third party suffering the same damages through the negligence of the same employer would have access to court action against the employer. Restricting the servicemen to the analogous and more generous benefits of the military and veteran laws similarly can not be viewed as discriminatory. In both instances, relief for injury or death is not subject to the uncertainties, expense and delay of establishing negligence but is guaranteed through direct, administrative payments.

III

Congress Did Not Intend That the Federal Tort Claims Act Apply to Claims for the Injury or Death of a Member of the Armed Forces

A. *The Purpose and Legislative History of the Act Confirm the Need for Excluding Soldier Injury and Death Claims from Its Scope*

It is fundamental that a statute must be construed in the light of the result Congress sought to achieve and the evils it sought to remedy. *United States* v. *American Trucking Assn's*, 310 U. S. 534; *South Chicago Coal & Dock Co.* v. *Bassett*, 309

U. S. 251; *International Stevedoring Co. v. Haverty*, 272 U. S. 50; *Warner v. Goltra*, 293 U. S. 155; *Billik v. Berkshire*, 154 F. 2d 493, 494 (C. A. 2); *Binkley Mining Co. v. Wheeler*, 133 F. 2d 863, 871 (C. A. 8), certiorari denied, 319 U. S. 764.

The title of the Legislative Reorganization Act of August 2, 1946, of which the Federal Tort Claims Act appears as Title IV, states its purpose to be "To provide for increased efficiency in the legislative branch of the Government" (60 Stat. 812). Title I of that Act relates in general to the procedural rules of the Senate and House (60 Stat. 841), describes the jurisdiction of the various congressional committees (60 Stat. 815 *et seq.*), and in Section 131 specifically prohibits the introduction of any private bill proposing to authorize the payment of money for property damages or for personal injury damages for which suit may be instituted under the Federal Tort Claims Act (60 Stat. 831). As stated in the title of the Act, its manifest purpose in including its Title IV (the Federal Tort Claims Act), and the concurrent prohibition of introduction of private bills, was designed to promote the efficiency of Congress by eliminating a serious obstacle to its legislative activity (S. Rep. No. 1400 on S. 2177, 79th Cong., 2d sess., pp. 7, 29, 92 Cong. Rec. 10049).

Congress had, prior to the Act of August 2, 1946, been compelled to divert a considerable portion of its time and energies to the consideration of a mass of private legislation, the need for which had arisen

out of damages caused to private parties by tortious conduct of governmental employees.

Widespread dissatisfaction with the private bill system had been long expressed.[23] The need for a Tort Claims Act "to relieve Congress from an intolerable situation which exists in the matter of adjudication of claims" was stressed in reports accompanying early measures on the subject. H. Rep. 667, 69th Cong., 1st sess. on S. 1912, p. 1. The private bill system was a congressional recognition of responsibility for wrongs done to individuals by Governmental fault. However, the congressional machinery utilized to make compensation for such wrongs was cumbersome and placed time-consuming and intolerable burdens on Congress. 69 Cong. Rec. 2184-2185; H. Rep. 2800, 71st Cong. 3d sess., on H.R. 17168, p. 2. As stated in the Committee reports:

> In other words, it may be said that Congress has recognized the general liability of the Government within maximum amounts [for torts].

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[23] For a collected list of Congress' criticisms, see Memorandum for House Committee on Judiciary, Federal Tort Claims Act, Appendix II, printed in records of Hearings before House Committee on Judiciary on H.R. 5373 and H.R. 6463, 77th Cong., 2d sess., p. 49 *et seq.* (1942). See also Gellhorn and Schenck, *Tort Actions against the Federal Government*, 47 Col. L. Rev. 722, 726 (1947); Gottlieb, *The Federal Tort Claims Act—A Statutory Interpretation*, 35 Geo. L. J. 1, 4 (1946); Anderson, *Tort and Implied Contract Liability of the Federal Government*, 30 Minn. L. Rev. 133, 149 (1946); Shumate, *Tort Claims against State Governments*, 9 Law and Contem. Prob. 242, 249 (1942); Luce, *Petty Business in Congress*, 26 Am. Pol. Sci. Rev. 815, 819 (1932); 8 Memoirs of John Quincy Adams 480 (1876).

but the machinery for determining that liability is defective and results in overburdening the claims committees of Congress and Congress itself with the consideration of tort liability claims * * *. [S. Rep. 1699, 70th Cong., 2d sess., on H.R. 9285, p. 4; S. Rep. 766, 71st Cong., 2d sess., on S. 4377, p. 2.]

The measure which included the Tort Claim bill and which finally became the Act of August 2, 1946, was introduced under the heading "More Efficient Use of Congressional Time." Report of the Joint Committee on the Reorganization of Congress, S. Rep. No. 1011, 79th Cong., 2d sess., p. 25. The Tort Claims Act, by making use of the experience of the Judicial branch in adjudication of tort claims, was the answer of Congress to the problems created by the private bill system and was directly intended to increase legislative efficiency by saving time ordinarily devoted to the consideration of private bills. See 92 Cong. Rec. 10049; 69 Cong. Rec. 2181; Hearings before Subcommittee of the H. Committee on Claims, on the General Tort Bill, 72nd Cong., 1st sess., p. 6.

That the Act of August 2, 1946, in substituting access to the courts for settlement of claims which had theretofore been resolved by special legislative proceedings was not directed at reducing the number of private acts passed on account of soldiers' deaths or injuries is evident from the very fact that no appreciable number of such private acts, if any

at all, were enacted in behalf of servicemen. As far as members of the armed forces were concerned, the well-known fact that they were entitled to pension benefits, disability payments, free hospitalization and medical care for any injury occurring during the period of their military service made unnecessary the passage of private acts in their behalf. The Administrator of Veterans Affairs has reported that for each of the years from 1942 through 1947 there were no private acts in effect conferring monetary benefits on veterans of World War II or on their dependents (Annual Reports of the Administrator of Veterans Affairs for 1942, p. 67, for 1943, p. 66, for 1944, p. 68, for 1945, p. 69, for 1946, p. 108, for 1947, p. 146). Actually private bills, which the Federal Tort Claims Act sought to do away with, were those introduced in behalf of members of the public who, because of the doctrine of sovereign immunity to suit, had no other recourse to compensatory relief for injuries or property damage inflicted as a result of negligent governmental activities.

A great number of these private acts were passed in order to compensate for damages caused by the negligent operation of Army vehicles. This was especially true of the five-year period preceding enactment of the Act of August 2, 1946, during which period military training was at its highest peak and the greatest number of military vehicles were in operation. Thus, Part 2 of Volume 59 of

the Statutes at Large shows page after page of Private Laws, passed in the first session of the 79th Congress in order to compensate members of the public who sustained personal injuries or property damages because of the negligence of Armed Forces personnel. It is important to note that each Private Law was enacted to relieve a *civilian* who who suffered as a result of negligent military operations.

Since a similar absence of Private Laws to award damages for death or injury to soldiers characterized the operation of the other Congresses preceding enactment of the Federal Tort Claims Act, it is clear that the Act did not aim at the elimination of such bills, but rather at the elimination of the huge number of private bills which had been introduced in behalf of non-servicemen. See the opinion below, R. 31; *Jefferson* v. *United States*, 77 F. Supp. 706, 712-713 (D. Md.).

The fact that the Act was intended to afford a means of relief to private citizens having personal injury or property damage claims against the United States, rather than to members of the armed forces for such claims, is confirmed by the following explanatory statement set forth at page 31, S. Rep. No. 1400 on S. 2177 (79th Cong., 2d sess.), which became the Legislative Reorganization Act of August 2, 1946:

> With the expansion of governmental activities in recent years, it becomes especially im-

portant to grant to *private* individuals the right to sue the Government in respect to such torts as negligence in the operation of vehicles.[24] [Italics supplied.]

Since it is evident, therefore, that the Federal Tort Claims Act was chiefly designed to authorize adjudication in the courts of those claims which theretofore had been recognized by Congress in Private Laws when asserted on behalf of non-servicemen, it is reasonable to assume that Congress did not intend the Act to encompass an entirely new and distinct group of claims arising out of the death or injury to soldiers for which it had already adequately provided.

B. *Other Provisions of the Act and the Legislative Policy Prohibiting Double Compensation Confirm This View.*

1. Other provisions of the Federal Tort Claims Act show that the Act is not intended to apply to soldier injury or death claims. Section 2672 of

[24] That a soldier acquires a special military status upon becoming a member of the armed forces and is not, during the term of his military service, generally considered or referred to as a "private" individual, is too well settled to require any extended discussion. *In re Grimley*, 137 U.S. 147; *In re Morrissey*, 137 U.S. 157, 159; *United States* v. *Williams*, 302 U.S. 46, 48; *Billings* v. *Truesdell*, 321 U.S. 542, 553. This statement, therefore, furnishes additional evidence that Congress, in enacting the Federal Tort Claims Act, was interested in authorizing judicial settlement of the ordinary run of tort claims asserted against the United States by private citizens, and not by servicemen. See the opinion below; R. 31.

Title 28 U.S.C. (60 Stat. 843) relating to administrative adjustment of tort claims under $1,000, provides that acceptance by the claimant of any award or settlement under the Act "shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States * * * by reason of the same subject matter."[25] Moreover, Section 2679 of Title 28 U.S.C. (60 Stat. 846), dealing with claims in connection with which suit is authorized under the Act, provides that the remedies provided by the Act for tort claims cognizable thereunder in court "shall be exclusive." Consequently, if the Act were interpreted to include claims on account of a soldier's injury or death, it is obvious that recourse to an administrative settlement or court suit under the Act might be deemed as nullifying completely any rights the soldier-claimant or litigant would other-

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[25] This language conforms closely to the Private Laws which Congress intended to eliminate by enacting the Federal Tort Claims Act. *Supra*, p. 33. Those Private Laws, without exception, provide that the damages awarded thereby are "in full settlement" or in "full satisfaction" of all of the beneficiary's claims against the United States as a result of the accident for which the award is made. *E.g.*, Private Law 11, 59 Stat. 688; Private Law 12, 59 Stat. 689; Private Law 134, 59 Stat. 738; Private Law 366, 59 Stat. 836; Private Law 197, 58 Stat. 949; Private Law 589, 58 Stat. 1110; Private Law 49, 57 Stat. 667; Private Law 164, 57 Stat. 717. Where a damage award is so conditioned on fully releasing the United States from all liability, it obviously is of a type unsuited to the needs of a soldier who otherwise would be entitled to pension and disability benefits, hospitalization and medical care, and the other benefits normally due him because he was a soldier at the time the injuries were sustained.

wise have to pension, disability, and other special statutory payments conferred with respect to injured or deceased soldiers. Expansion of the Act to situations which might bring about such a unique and obviously unintended result, depriving servicemen and their dependents of these important statutory benefits, should not be lightly made.

Petitioner's contention that the instant action is maintainable under a literal reading of the Act creates additional instances of undesirable or absurd consequences [26] which Congress could not be presumed to have intended, and which can be avoided only by adoption of the more reasonable interpretation that that Act does not apply to suits for damages arising out of injury or death of a soldier. See opinion below, R. 34-35.

Thus, Section 2680(j) of Title 28 U.S.C. (60 Stat. 846), specifically excludes from the operation of the Act "any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war." Unless the Act is deemed to exclude from its scope suits by soldiers, it is clear from this exclusionary provision that a soldier or his survivor, who would otherwise be entitled to sue the United States under the Federal Tort Claims Act, is deprived of such right to sue because the soldier was injured or killed as a result

[26] Even where the plain, literal meaning does not produce absurd results but merely an unreasonable one, it is to be avoided. *United States* v. *American Trucking Associations, Inc.*, 310 U.S. 534, 543. See, also, *Boston Sand Co.* v. *United States*, 278 U.S. 41, 48; *United States* v. *Dickerson*, 310 U.S. 554, 561.

of combat activities in wartime. The result therefore would be that a serviceman, injured in the course of a non-combatant activity would receive greater compensation than one injured in combat through the negligence of his comrades. We submit that no such intent may be imputed to Congress.

Similarly, Section 2680(k) of Title 28 U.S.C. (60 Stat. 846) excludes from the operations of the Federal Tort Claims Act claims "arising in a foreign country." If the statute is interpreted to authorize suits by servicemen, the exclusionary language of Section 2680(k) would mean that the soldier, who was ordered to overseas duty in order to fight in a foreign battlefield, would be deprived of rights to sue the United States for personal injuries otherwise covered by the Federal Tort Claims Act, whereas the soldier who was stationed in the United States, and thus freed of the dangers inherent in overseas military assignments would be allowed to sue under that Act.

The only possible construction, we submit, which would avoid these highly inequitable and illogical results, is to view the Act as affording redress to civilians injured by the tortious conduct of governmental employees, and to require all soldiers who have been so injured in the course of their service to satisfy their claims for such injuries through the payments and benefits normally due them under the general and comprehensive statutory scheme specifically designed to afford them such relief.

2. This general congressional policy of prohibiting the United States from conferring duplicate compensation benefits on a serviceman for personal injuries sustained during his period of service is not a recent development but was formally articulated by Congress as early as 1818 and has been consistently adhered to since that time. The Act of March 18, 1818, specifically provided that its benefits would be made available only to those who relinquished their claims to every other pension theretofore allowed under federal law. 3 Stat. 410. A later Act of July 23, 1882 (22 Stat. 176, 38 U. S. C. 29), also provides that a veteran may not receive additional statutory benefits for the same injuries for which he is drawing benefits under the general pension laws unless the statute conferring the additional benefits "expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law."

This congressional policy is again evidenced in the World War Veterans' Act of 1924 (Act of June 7, 1924, 43 Stat. 607, as amended, 38 U. S. C. 421 *et seq.*), which provides that for disability and deaths of servicemen compensable under that Act, no other pension law or laws providing for gratuities or payments shall be applicable (Section 212, 43 Stat. 623, as amended, 38 U. S. C. 422), and which also requires surrender of any gratuity or pension payable on account of the same injury or

death (Sections 201 and 202, 43 Stat. 616, 618, as amended, 38 U. S. C. 472 and 489). Moreover, the Military Claims Act (Act of July 3, 1943, 57 Stat. 372, as amended, 31 U. S. C. 223b), in allowing the Secretary of the Army to settle claims arising out of acts or omissions of military or civilian employees of the Army, specifically excludes "claims for personal injury or death of military personnel."

Still additional manifestation of this policy of prohibiting dual compensation for deaths or injuries occurring in military service is found in the congressional rewriting in 1943 of Veterans Regulation No. 10, Par. XIII so as to prohibit the concurrent payment of more than one award, pension, or compensation to any person based on his service (Act of July 13, 1943, 57 Stat. 554, 559), and in the statute prohibiting the payment of federal employee compensation benefits for certain injuries or deaths for which a pension based on military service is being paid by the United States (Act of July 15, 1939, 53 Stat. 1042, as amended, 5 U.S.C. 797).

C. *The failure of Congress to retain a specific provision excepting persons entitled to the benefits of the World War Veterans Act of 1924 as amended from the operation of the Federal Tort Claims Act, does not indicate a legisla-*

[27] For administrative rulings, by the Attorney General, implementing this well-settled congressional policy, see 37 Op. A. G. 87 (1933), and 36 Op. A. G. 164 (1930).

tive intent to make that Act applicable to claims on account of injuries or deaths of members of the armed forces.

Chief Judge Parker, in his dissenting opinion below, lays great stress on the fact that not only does the Act itself fail to contain a specific exception of claims for personal injury or death of a serviceman but that H. R. 181, 79th Cong., 1st sess., which was a general tort claims bill, and the immediate predecessor of the bill which became the Federal Tort Claims Act did contain the following exception:

> (8) Any claim for which compensation is provided by the Federal Employees Compensation Act, as amended, or by the World War Veterans Act of 1924, as amended.

He argues that legislative elimination of this exception in the Federal Tort Claims Act was deliberate and must be taken as evidence of a legislative intent to include claims for personal injury or death of members of the armed forces. While admitting that the omitted exception did not exclude claims of servicemen *eo nomine*, he argued that the only disability allowance which they or their dependents could receive was that provided by the World War Veterans Act of 1924, as amended. We submit that these conclusions are based on false premises and are incorrect.

1. *The 8th exception in H. R. 181, 79th Cong., 1st sess., was not intended to cover claims for the injury or death of members of the armed services.*

Commencing with the 68th Congress, 1st session and extending through the 74th Congress, 18 tort claims bills were introduced.[28] These bills generally did not give the claimant access to the courts but afforded recourse only to the Employees Compensation Commission or the General Accounting Office, with a right to reassert certain types of claims in the Court of Claims. All but two of these bills (H. R. 12178, 68th Cong., 2d sess. and H. R. 8561, 73rd Cong., 2d sess.) contained exceptions of claims of members of the armed forces. Fourteen contained the following exception:

> Any claim for injury or death in ~~line of duty~~ by any member of the military or naval forces,

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[28] H. R. 12178—68th Cong., 2d sess.
H. R. 12179—68th Cong., 2d sess.
S. 1912—69th Cong., 1st sess.
H. R. 6716—69th Cong., 1st sess.
H. R. 8914—69th Cong., 1st sess.
H. R. 9285—70th Cong., 1st sess.
S. 4377—71st Cong., 2d sess.
H. R. 15428—71st Cong., 3rd sess.
H. R. 16429—71st Cong., 3rd sess.
H. R. 17168—71st Cong., 3rd sess.
H. R. 5065—72nd Cong., 1st sess.
S. 211—72nd Cong., 1st sess.
S. 4567—72nd Cong., 1st sess.
S. 1833—73rd Cong., 1st sess.
H. R. 129—73rd Cong., 1st sess.
H. R. 8561—73rd Cong., 2d sess.
H. R. 2028—74th Cong., 1st sess.
S. 1043—74th Cong., 1st sess.

in cases where relief is provided by other law.[29]

Each of the fourteen bills also carried the additional exception:

> * * * claims for which compensation is provided by the Federal Employees Compensation Act, as amended, or by the World War Veterans Act of 1924, as amended. (United States Code, Title 38, ch. 10.)

Thus it is clear that through six Congresses the proponents of tort claims bills were of the opinion that persons entitled to the benefits of the World War Veterans Act were a distinct and separate class from those who were members of the armed forces and that each exception was separate and distinct.

No tort claims bills were introduced in the 75th Congress. Commencing with the 76th Congress and through the 79th Congress, eleven tort claims bills were introduced, each of which contained the exception for the World War Veterans Act of 1924,[30] but none of which contained the exception

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[29] In H. R. 12179, 68th Cong., 2d sess. and H. R. 8914, 69th Cong., 1st sess., the exception read:

> This Act shall not apply to any soldier, sailor or marine of the United States for injuries received in time of duty.

These two bills did not contain an exception dealing with persons entitled to the benefits of the Federal Employees Compensation Act and the World War Veterans Act of 1924.

[30] Section 303(8), H. R. 7236, 76th Cong., 3rd sess; Section 303(8), S. 2690, 76th Cong., 1st sess; Section 402(8), S. 2207, 77th Cong., 2d sess; Section 402(a)(8), S. 2221, 77th Cong., 2d sess; Section 303(8), H. R. 5299, 77th Cong., 1st

of claims for personal injuries of members of the armed forces. These bills, at times, were drafted in conjunction with the Department of Justice. H. Rep. No. 1287, 79th Cong., 1st sess., p. 7. It is reasonable to conclude that the omission of the specific exemption for members of the armed services resulted not only from congressional awareness of the decision in *Dobson* v. *United States*, *supra*, which would make such an exception unnecessary but also from departmental awareness of that decision and its implications. So far as we have been able to discover, no reference to claims for injuries or death of members of the armed services appears in the hearings, reports or debates on any of these bills.

2. *The World War Veterans Act of 1924 as amended is not applicable to members of the armed forces who might institute suit under the Federal Tort Claims Act.* The World War Veterans Act has a very restricted scope, as far as service-time incurred injuries are concerned. It covers injury or death sustained by servicemen of World War I, during the period from 1917-1921.

Section 212 of the Act of June 7, 1924, 43 Stat. 623 (38 U.S.C. 422), provides:

> This Act is intended to provide a system for the relief of persons who were disabled,

sess; Section 402(8), H. R. 6463, 77th Cong., 2d sess; Section 303(8), H. R. 5373, 77th Cong., 1st sess; Section 402(8), H. R. 1356, 78th Cong., 1st sess; Section 303(8), H. R. 817, 78th Cong., 1st sess; Section 402(a)(8), S. 1114, 78th Cong., 1st sess; Section 402(a)(8), H. R. 181, 79th Cong., 1st sess.

and for the dependents of those who died as a result of disability suffered in the military service of the United States between April 6, 1917, and July 2, 1921.

Section 200 of the 1924 Act, 43 Stat. 615 (38 U.S.C. 471), further provides:

> For death or disability resulting from personal injury suffered or disease contracted in the military or naval service on or after April 6, 1917, and before July 2, 1921, * * * the United States shall pay * * * compensation as hereinafter provided * * *.

Obviously, the World War Veterans Act of 1924 could have had no application here. The soldiers involved sustained their service-time injury and death during World War II. For World War II disability or death, pension payments are made by the Veterans Administration under the Act of March 20, 1933 (38 U.S.C. 701), and not under the 1924 Act. In fact, since the Federal Tort Claims Act recognizes only those claims accruing after January 1, 1945, the 1924 Act can not apply to any claim under the Federal Tort Claims Act for a military service-incurred death or disability.

Furthermore, the 1924 Act as amended covers a large group of persons no longer members of the armed forces, and certain injuries which they receive in civilian life make them eligible for limited disability benefits and entitle their dependents to certain dependency allowances on their death. It is to this class of persons that the omitted amend-

ment was directed and not to members of the armed forces. Contrary to the conclusions of the dissenting judge below, therefore, we think it clear that the legislative history of tort claims bills indicate that Congress was not concerned with claims for injury or death of members of the armed forces as it initially assumed that the bills would not apply to them at all.

D. *Practical Considerations Confirm the View that Congress Did Not Intend that the Act Apply Either to Service-Connected or Service-Caused Injuries or Death.*

As the court below remarked (R. 35-36):

> * * * It is easy to conjure up the unfortunate results, including the subversion of military discipline, if soldiers could sue the United States for injuries incurred by reason of their being in the armed service of their country. If soldiers could sue for such injuries as illness based on the alleged negligence of the company cook or mess sergeant, or if soldiers who contract sickness on wintry sentry duty had a right of action against the Government on the allegation of a negligent order given by the company commander, then the traditional grousing of the American soldier would result in the devastation of military discipline and morale.

Congress must have been aware of these considerations. Had it contemplated that the Act would apply to members of the armed services in respect of personal injury or death, it certainly would have made some appropriate provision therefor. The

same observation is true if Congress intended the Act to apply to service-connected but not service-caused disabilities.

Petitioners, in evident agreement that soldiers who have sustained service-caused injuries (*i.e.*, those resulting from direct, military activity) should be confined to the benefits available under military and veterans' laws, argue, however, that soldiers, like petitioners, whose injuries and death were merely service-connected (*i.e.*, those occurring during the period of the soldier's service, but while he was on leave or furlough from military duties) should not only have access to such benefits but also the right to sue for additional damages under the Federal Tort Claims Act (Pet. 16-17, 21-22).

The court below readily admitted "the added and greater reason for denying recovery where the injury is service-caused * * * than where the injury is not service-caused * * *" (R. 35). However, the court rejected the attempted distinction, stating that there is nothing in the Act "which would justify us in holding that Congress intended to include death of, or injury to, a soldier, which was not service-caused * * * and to exclude service-caused injury or death" (R. 36). While it is true that benefits under the military and veterans' laws are payable when the serviceman's injury or death occurred in "line of duty," Congress has specifically defined that term to include any injury or death incurred during the serviceman's period of military service, whether the

soldier at the time of his injury or death was on furlough, authorized leave, or on active duty. Act of September 27, 1944, 58 Stat. 752 amending Vet. Reg. No. 10, Par. VIII; see 38 C. F. R. 1944 Supp. 35.10(h); 32 Op. A. G. 12 (1919); Dig. Op. JAG (1912-1940) 952; *Moore* v. *United States*, 48 C. Cls. 110. As pointed out by the court below, the fact that payments have already been made by the United States on account of the death of Arthur L. Brooks and the injuries of his brother, Welker, shows the practice where the serviceman is on leave (R. 32), and shows that the distinction stressed by petitioners is unsound.

The fact that these payments were made also shows that the *Dobson, Bradey,* and related cases are, despite petitioner's assertion to the contrary, completely applicable here. The rationale of those cases was not, as contended by petitioner, the fact that the injuries were service-caused, but rather that there was in existence a comprehensive statutory system for making payment on such claims. See opinion below, R. 32-34; *supra*, p. 12.[31]

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[31] In addition to the decision below, which is the only appellate decision on the question, nearly all district court decisions have so construed the Federal Tort Claims Act. *Jefferson* v. *United States*, 77 F. Supp. 706 (D. Md.); *Troyer* v. *United States*, 79 F. Supp. 558 (D. Mo.); *Atkinson* v. *United States*, unreported (D. Colo.); *Griggs* v. *United States*, unreported (D. Colo.); *Feres* v. *United States*, unreported, (N.D. N.Y.); see also, *Perucki* v. *United States*, 80 F. Supp. 959 (M.D. Pa.); *Wham* v. *United States*, 81 F. Supp. 126 (D. D.C.); *DeRey* v. *United States*, unreported (D. Puerto Rico). It should be noted that Judge Chesnut's initial and tentative conclusion in the *Jefferson* case was that the Federal Tort Claims Act does cover claims

IV

Acceptance of Benefits under the Military and Veterans' Laws Bars Suit under the Federal Tort Claims Act

Petitioner's contention that the question of whether the acceptance of statutory pensions and other compensation bars the instant action was decided by the court below against the Government (Pet. 26) is obviously unsound. The court below did not even discuss this question. If it had, we submit, it should have ruled that the acceptance of the statutory benefits for servicemen and their dependents bars subsequent action for damages under the Federal Tort Claims Act. Prior cases under related legislation have all so held: *Dahn* v. *Davis*, 258 U. S. 421; *Sandoval* v. *Davis*, 288 Fed. 56 (C. A. 6); *Militano* v. *United States*, 156 F. 2d 599 (C. A. 2); *United States* v. *Marine*, 155 F. 2d 456 (C. A. 4); *Lassell* v. *Mellon, Director General of Railroads*, 219 App. Div. 589, 220 N. Y. Supp. 235.

In the *Sandoval* case, two soldiers who were injured and a third who was killed as a result of negligent operations of a railroad under federal control sued the United States for damages. In the Director General's answers to the complaints filed on behalf of the soldiers, the defense that no liability

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for injuries or deaths of servicemen (74 F. Supp. 203). However, after complete and careful reconsideration, Judge Chesnut ruled that such claims are not within the scope of the Act (77 F. Supp. 706). Three district courts have adopted the earlier conclusion which Judge Chesnut later rejected, *Alansky* v. *Northwest Airlines*, 76 F. Supp. 556, 559 (D. Mont.); *Samson* v. *United States*, 79 F. Supp. 406 (S.D. N.Y.); *Armstrong* v. *United States*, unreported, (D. Tenn.).

exists with respect to such killed or injured soldiers was set up. Plaintiffs' demurrer to this defense was overruled, and the District Court, entering judgment for the defendant on the pleadings, held (*Sandoval* v. *Davis*, 278 Fed. 968, 972-974 (N. D. Ohio)) that no recovery could be allowed

> because of the compensation provisions of the War Risk Insurance Act.
>
> * * * *
>
> In this case * * * the two injured plaintiffs and the beneficiaries [of the deceased soldier] in the other case have been awarded and have received and accepted compensation. In this situation the present actions are prosecuted by the plaintiffs to recover additional compensation from the United States, which has already made compensation for such injuries and death, and are not actions against persons other than the United States causing such injury and death.
>
> * * * * * * *
>
> * * * Congress did not intend to confer upon an injured or killed soldier or sailor a right to a double recovery of compensation from the United States.

On appeal, the Sixth Circuit Court of Appeals affirmed the District Court's decision and ruled that even though the veterans' benefit acts, under which the plaintiff had been compensated, contained no language indicating that such benefits were exclusive, acceptance of the benefits precluded suit against the United States (288 Fed. 56). The same result has recently been reached by the Tenth

Circuit Court of Appeals in a suit by a civilian employee of the United States under the Federal Tort Claims Act. *Parr* v. *United States*, January 21, 1949, 17 U. S. Law Week 2348. No reason exists which would justify a different conclusion where the suit under the Federal Tort Claims Act is instituted by a military employee of the Government.

As shown above, petitioners are receiving all benefits and payments to which they are by law entitled. The benefits here, with respect to the injured serviceman, include a lifetime, monthly disability pension of $27.60, valued at about $13,000; free hospitalization and medical care. With respect to the deceased serviceman, the six-month gratuity payment has been made, and monthly pension payments will be made to his parents upon their furnishing proper proof of dependency. No disavowal of these, or other payments such as the insurance benefits mentioned above, has been made. Receipt of these statutory payments constitutes, we submit, a bar to the present actions.

CONCLUSION

For the reasons stated, it is respectfully submitted that the decision below should be affirmed.

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Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
MORTON HOLLANDER,
Attorneys.

FEBRUARY, 1949.

APPENDIX A

The pertinent provisions of the Federal Tort Claims Act [32] provide as follows:

28 U.S.C. 1346. UNITED STATES AS DEFENDANT

* * * * * *

(b) Subject to the provisions of chapter 173 [33] of this title, the district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

* * * * * *

28 U.S.C. 2680. EXCEPTIONS

The provisions of this chapter and section 1346 (b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a

[32] See footnote 1, *supra*, p. 2.

[33] Apparently should read "171" since that is the number of the chapter on Tort Claims Procedure.

statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

APPENDIX B

The Letter from the Veterans' Administration the Attorney General:

VETERANS' ADMINISTRATION

Branch Office No. 4
900 North Lombardy Street
Richmond 20, Virginia

Your File Reference: PF:FM
157-55-4

In reply refer to: RVSB
XC-3, 867,378
Brooks, Arthur L.

AUGUST 12, 1947.

THE ATTORNEY GENERAL
U.S. Department of Justice
Washington 25, D.C.

DEAR SIR: This is in reply to your letter dated July 30, 1947, wherein you request duplicate sets of the "XC" file (XC-3, 867, 378) of the above-named deceased veteran and information as to any awards of benefits made on account of the veteran's death with reference to the statutes and regulations under which the awards were made.

There are no duplicate copies of the "XC" file although the original is, of course, subject to judicial process. For your information, the file contains the following papers:

(1) Application for National Service Life Insurance of Arthur Lorrane Brooks in the amount of $5,000.00. He named his mother, Maggie Hathcock Brooks and his father, James Marshal Brooks of Route 9, Box 73, Charlotte, North Carolina as coprincipal beneficiaries. His sister, Mildred Brooks, was named contingent beneficiary. Payments of National Service Life Insurance were approved and are presently being made to the mother and father. There are a number of letters and forms pertaining to payment of National Service Life Insurance.

(2) Report of Death from the War Department, Adjutant General's Office dated March 6, 1945 which shows that Arthur Lorrane Brooks, Army Serial Number 34,256,644, enlisted March 20, 1942 and died February 17,

1945; the cause of death was "Traumatic shock due to fracture of ribs, laceration of diaphragm, spleen and liver; massive hemothorax bilateral". The death was held to be in line of duty and not caused by misconduct.

(3) A delayed birth certificate of the veteran shows that he was born June 2, 1912 at Harrisburg, North Carolina.

(4) Photostat copies of the Report of Investigation by a Board of Officers at Fort Bragg, North Carolina dated February 21, 1945. The original report and exhibits are in the possession of the War Department, Adjutant General's Office. A copy of the finding approved by the Adjutant General contains the following remarks: "Testimony obtained from all witnesses except the passengers in Sgt. Brooks' vehicle who were critically injured. The accident was evidently caused by Sgt. Brooks' failure to observe the approaching Army truck due to bad weather conditions. There is no indication that Sgt. Brooks was intoxicated or under the influence of drugs at the time of the accident. No coroner's inquest has been held at this time."

(5) Claim by both mother and father on VA Form 535. This claim was disallowed on March 11, 1946, because dependence was not established. The claimants were notified of the disallowance action on March 11, 1946.

It will be noted that the original records dealing with the immediate circumstances sur-

rounding the veteran's death are in the possession of the War Department, Adjutant General's Office.

Very truly yours,

[S.] W. B. UPPERCUE,
Director, Claims Service.

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